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OPEN MEETING ITEM

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WILLIAM A. MUNDELL  
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BRIAN C. MCNEIL  
Executive Secretary

ARIZONA CORPORATION COMMISSION

2003 NOV 18 A 9:58

AZ CORP COMMISSION  
DOCKET CONTROL

DATE: NOVEMBER 18, 2003

DOCKET NO: RR-03639A-03-0746

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc Stern.  
The recommendation has been filed in the form of an Opinion and Order on:

UNION PACIFIC RAILROAD COMPANY  
(GRADE-SEPARATED)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

NOVEMBER 28, 2003

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

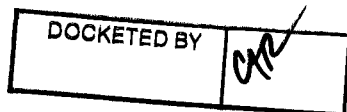
DECEMBER 2, 2003 and DECEMBER 3, 2003

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931

Arizona Corporation Commission

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NOV 18 2003



  
BRIAN C. MCNEIL  
EXECUTIVE SECRETARY

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347

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This document is available in alternative formats by contacting Yvonne McFarlin, ADA Coordinator, voice phone number 602-542-3931, E-mail [YMcFarlin@cc.state.az.us](mailto:YMcFarlin@cc.state.az.us)

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MARC SPITZER, Chairman  
4 WILLIAM A. MUNDELL  
5 JEFF HATCH-MILLER  
6 MIKE GLEASON  
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF  
9 THE ARIZONA DEPARTMENT OF  
10 TRANSPORTATION ON BEHALF OF THE  
11 UNION PACIFIC RAILROAD COMPANY TO  
12 CONSTRUCT A GRADE-SEPARATED  
13 CROSSING AT THE SANTAN FREEWAY  
14 (SR202L) AAR/DOT NO. 922-450T, IN THE  
15 TOWN OF GILBERT, MARICOPA COUNTY,  
16 ARIZONA.

DOCKET NO. RR-03639A-03-0746

DECISION NO. \_\_\_\_\_

OPINION AND ORDER

11 DATE OF HEARING:

November 13, 2003

12 PLACE OF HEARING:

Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE:

Marc E. Stern

14 APPEARANCES:

Mr. David Ronald, Staff Attorney, Legal  
Division, on behalf of the Utilities Division of  
the Arizona Corporation Commission.

16 **BY THE COMMISSION:**

17 On October 9, 2003, the Arizona Department of Transportation ("ADOT") filed with the  
18 Arizona Corporation Commission ("Commission") a request for approval to construct a grade-  
19 separated crossing for the Union Pacific Railroad ("Railroad") track over its intersection with the new  
20 Santan Freeway in Gilbert, Maricopa County, Arizona, AAR/DOT No. 922-450T ("Application").

21 On October 24, 2003, by Procedural Order, the Application was set for hearing and ADOT  
22 was ordered to provide notice to any interested parties of the Application and the hearing.

23 On October 30, 2003, ADOT filed certification that notice had been provided pursuant to the  
24 terms of the Procedural Order.

25 On November 13, 2003, a full public hearing was held before a duly authorized  
26 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. At the conclusion of  
27 the hearing, the matter was taken under advisement pending submission of a Recommended Opinion  
28 and Order to the Commission.

\* \* \* \* \*

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

**FINDINGS OF FACT**

1. On October 9, 2003, ADOT filed an Application in which it requested an Opinion and Order from the Commission to approve an agreement between ADOT and the Railroad for the construction of a grade-separated crossing for the Railroad over its intersection with the new Santan Freeway which is under construction in Gilbert, Maricopa County, Arizona, AAR/DOT No. 922-450T. To facilitate this construction, a shoofly with warning signals will be constructed for the Railroad to use temporarily.

2. On October 30, 2003, ADOT filed certification that it had provided notice by certified U.S. mail of the Application and hearing thereon.

3. A hearing was held as scheduled on November 13, 2003.

4. The Application provides for the Railroad's tracks to be constructed on an overpass with the new Santan Freeway's roadway running beneath the Railroad overpass. The Railroad will also install temporary warning signals to accommodate the temporary road detour where it intersects with the shoofly.

5. Staff testified that the cost for the installation of the overpass as provided in the Application will be funded by ADOT.

6. After construction of the grade-separated crossing, the Railroad will be responsible for the maintenance of its tracks, in accordance with A.A.C. R14-5-104, but the overpass bridge will be maintained by ADOT.

7. Staff has recommended that the Application be approved.

**CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the Railroad and over the subject matter of the Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and 40-337.01.

2. Notice of the Application was provided in accordance with the law.

3. The construction of the grade-separated crossing at the new Santan Freeway is necessary for the public's convenience and safety.

4. The Application should be approved as recommended by Staff.

**ORDER**

IT IS THEREFORE ORDERED that the Arizona Department of Transportation's Application on behalf of the Union Pacific Railroad Company is hereby approved.

IT IS FURTHER ORDERED that the Union Pacific Railroad shall notify the Commission, in writing, within ten days of both the commencement and the completion of the crossing upgrade, pursuant to A.A.C. R14-5-104.

IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall maintain its tracks on the Santan Freeway overpass in accordance with A.A.C. R14-5-104.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN	COMMISSIONER	COMMISSIONER
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COMMISSIONER	COMMISSIONER
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IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_  
MES:mlj

1 SERVICE LIST FOR: UNION PACIFIC RAILROAD COMPANY

2 DOCKET NO.: RR-03639A-03-0746

3 Joe Schwer  
4 Assistant Manager/Railroad Liaison  
5 Utility & Railroad Engineering Section  
6 205 S. 17<sup>th</sup> Avenue, Mail Drop 618E  
7 Phoenix, AZ 85007

8 David Gibson  
9 ADOT Traffic Records Section  
10 206 S. 17<sup>th</sup> Avenue, MD 064R  
11 Phoenix, AZ 85007

12 Freddy Chung  
13 UNION PACIFIC RAILROAD COMPANY  
14 19100 Slover Avenue  
15 Bloomington, CA 92316

16 Christopher Kempley, Chief Counsel  
17 Legal Division  
18 ARIZONA CORPORATION COMMISSION  
19 1200 West Washington Street  
20 Phoenix, Arizona 85007

21 Don Thompson, Railroad Safety Supervisor  
22 Office of Railroad Safety  
23 ARIZONA CORPORATION COMMISSION  
24 1200 West Washington Street  
25 Phoenix, Arizona 85007

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